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1 SAN JOSE, CALIFORNIA

MARCH 17, 2014

2 P R O C E E D I N G S

3 (WHEREUPON, COURT CONVENED AND THE FOLLOWING PROCEEDINGS
4 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

5 THE COURT: MR. RIVERA, WOULD YOU PLEASE CALL THE
6 MATTER THAT'S SET FOR TRIAL.

7 THE CLERK: YES, YOUR HONOR.

8 CALLING THERANOS, INC., ET AL VERSUS FUISZ PHARMA, LLC,
9 ET AL. CASE NUMBER CV-11-5236-PSG.

10 MATTER ON FOR TRIAL.

11 COUNSEL, PLEASE STATE YOUR APPEARANCES.

12 MR. BOIES: GOOD MORNING, YOUR HONOR.

13 DAVID BOIES REPRESENTING THE PLAINTIFFS.

14 WITH ME AT COUNSEL TABLE IS MIKE UNDERHILL AND MEREDITH
15 DEARBORN, AND OUR CLIENT REPRESENTATIVE ELIZABETH HOLMES.

16 THE COURT: MR. BOIES, GOOD MORNING TO YOU AND YOUR
17 COLLEAGUES.

18 MR. BOIES: THANK YOU.

19 MR. J. FUISZ: GOOD MORNING, YOUR HONOR.

20 JOE FUISZ, PRO SE.

21 THE COURT: MR. FUISZ.

22 MS. BALTA: GOOD MORNING, YOUR HONOR.

23 ATHINA BALTA REPRESENTING FUISZ PHARMA.

24 MS. ANDERSON: RHONDA ANDERSON REPRESENTING FUISZ
25 PHARMA.

1 MR. R. FUISZ: RICHARD FUISZ, PRO SE.

2 THE COURT: LET ME BEGIN BY JUST NOTING I DID SIGN A
3 CERTAIN PRO HAC VICE ORDER A FEW MINUTES AGO, SO I BELIEVE WE
4 NOW HAVE A FULL TEAM ON THE DEFENSE SIDE.

5 MR. J. FUISZ: THANK YOU, YOUR HONOR.

6 THE COURT: WITH THAT, I UNDERSTAND CERTAIN
7 DEVELOPMENTS HAVE TAKEN PLACE OVER THE WEEKEND THAT YOU WOULD
8 LIKE TO GET ME UP TO SPEED ON.

9 MR. BOIES: YES, YOUR HONOR.

10 MAY WE APPROACH THE BENCH?

11 THE COURT: YOU MAY. OF COURSE.

12 (SIDE-BAR DISCUSSION OFF THE RECORD.)

13 MR. BOIES: OVER THE WEEKEND AND PARTICULARLY
14 YESTERDAY AFTERNOON, EVENING, THE PARTIES MET FOR A NUMBER OF
15 HOURS, AND I'M PLEASED TO BE ABLE TO INFORM THE COURT THAT WE
16 HAVE RESOLVED THE CASE.

17 WE HAVE A SIGNED SETTLEMENT AGREEMENT THAT WE WOULD
18 INTEND TO IMPLEMENT TODAY.

19 WE WOULD NEED TO DRAFT A JUDGMENT THAT IS BEING -- IN THE
20 PROCESS OF DRAFTING RIGHT NOW THAT WE WOULD SUBMIT TO THE COURT
21 FOR ITS CONSIDERATION.

22 WE ALSO WILL HAVE A SOMEWHAT MORE FORMAL SETTLEMENT
23 AGREEMENT, ALTHOUGH THIS AGREEMENT ITSELF IS INTENDED TO BE
24 BINDING.

25 THE COURT: ALL RIGHT.

1 MS. ANDERSON, MR. FUISZ, DO YOU WISH TO ADD INTERESTING?

2 MR. J. FUISZ: NOTHING TO ADD.

3 MS. ANDERSON: NO, NOTHING TO ADD.

4 THE COURT: MR. UNDERHILL? I DON'T WANT TO EXCLUDE
5 YOU, SIR.

6 MR. UNDERHILL: NO.

7 THE COURT: OKAY. ALL RIGHT.

8 I UNDERSTAND THE PLAN, PURSUANT TO THIS SETTLEMENT
9 AGREEMENT, WOULD BE FOR PARTIES TO FILE A DISMISSAL.

10 WHEN WOULD YOU EXPECT --

11 MR. BOIES: I THINK WE WOULD DO THAT TODAY.

12 THE COURT: YOU WILL HAVE NO ARGUMENT FROM THE COURT.

13 ALL RIGHT. WELL, I DO APPRECIATE YOUR LETTING ME KNOW OF
14 THIS AND I CONGRATULATE YOU ON THE SUCCESSFUL RESOLUTION.

15 IF I MIGHT SUGGEST, I TAKE IT FROM THIS SIDE YOU ARE NOT
16 INTERESTED IN DISCLOSING ANYTHING OTHER THAN WHAT'S PROVIDED
17 HERE?

18 MR. J. FUISZ: MAYBE NOT EVEN THAT, YOUR HONOR.

19 MR. BOIES: I THINK WE WILL NEED SOME STATEMENT.

20 THE IDEA WAS WE WOULD MAKE THIS STATEMENT HERE AND
21 HOPEFULLY THAT WOULD GIVE PEOPLE WHAT THEY NEED.

22 BECAUSE OF THERANOS INVESTORS, THERE WILL BE SOME
23 QUESTIONS TO ANSWER TO THEM. BUT OVER TIME I THINK THIS WOULD
24 SOMEHOW COME OUT, BUT THE IDEA IS NOT TO HAVE ANY MORE
25 PUBLICITY THAN IS ESSENTIAL.

1 THERE HAS BEEN A REPORTER WHO I THINK HAS BEEN COVERING
2 THIS, AND I THINK IT'S LIKELY THAT AT LEAST THE FACT OF THE
3 ENDING OF THE TRIAL AND THIS STATEMENT WOULD BE PICKED UP.

4 THE COURT: ALL RIGHT.

5 IF I MIGHT SUGGEST, I THINK IT SUFFICIENT THAT I SIMPLY
6 NOTE ON THE RECORD THAT THERE HAS BEEN A SETTLEMENT, AND THAT
7 IN LIGHT OF THAT, THE TRIAL IS NO LONGER NECESSARY.

8 I WILL REFRAIN FROM ANY FURTHER COMMENTARY THAN THAT.
9 AND I WILL LEAVE IT TO THE PARTIES TO IMPLEMENT AND EXECUTE
10 PARAGRAPH 6 AS THEY SEE FIT.

11 OKAY?

12 MR. BOIES: YES, YOUR HONOR.

13 MR. J. FUISZ: OKAY. THANK YOU, YOUR HONOR.

14 THE COURT: WHY DON'T WE TAKE THE BENCH AND PROCEED
15 WITH THAT.

16 MR. BOIES: THANK YOU, YOUR HONOR.

17 (ON THE RECORD.)

18 THE COURT: I HAVE BEEN INFORMED BY COUNSEL AS WELL
19 AS THE PARTIES THAT A SETTLEMENT HAS BEEN REACHED IN THIS
20 MATTER AND THAT A TRIAL IS NO LONGER NECESSARY.

21 SO IN LIGHT OF THAT, LET ME SAY TO COUNSEL AND THE
22 PARTIES, IT'S BEEN A LONG AND WINDING ROAD FOR US ALL, BUT I
23 TRUST THAT THIS RESOLUTION IS MUTUALLY SATISFACTORY.

24 IN LIGHT OF THAT, I WANT TO CONGRATULATE YOU FOR YOUR
25 EFFORTS. AND LET ME ALSO SAY PERSONALLY AND PROFESSIONALLY

1 THIS HAS BEEN AN EXTREMELY REWARDING EXPERIENCE FOR ME AND I DO
2 ENJOY HAVING YOU IN MY COURT AND I LOOK FORWARD TO SEEING, AT
3 LEAST SOME OF YOU, BACK HERE IN PERHAPS A MORE PLEASANT
4 CONTEXT.

5 WITH THAT I WISH YOU SAFE TRAVELS HOME AND THE VERY BEST
6 IN THE FUTURE.

7 MR. BOIES: THANK YOU, YOUR HONOR.

8 THE COURT: MR. RIVERA RIGHTLY POINTS OUT WE DO HAVE
9 THE SMALL MATTER OF A JURY.

10 AND I THINK IT FAIR TO BRING THEM IN, DISCHARGE THEM WITH
11 ALL OF US HERE. SO LET'S TAKE CARE OF THAT.

12 I WILL INFORM THEM SIMPLY THAT A SETTLEMENT HAS BEEN
13 REACHED AND THANK THEM FOR THEIR TIME.

14 MR. BOIES: WOULD IT APPROPRIATE FOR US, YOUR HONOR,
15 TO JUST THANK THEM AS WELL?

16 THE COURT: I WILL GIVE EACH OF YOU THE OPPORTUNITY.
17 I THINK THAT WOULD BE FAIR AND APPROPRIATE. ABSOLUTELY.

18 MR. BOIES: THANK YOU, YOUR HONOR.

19 THE COURT: MR. RIVERA, WOULD YOU PLEASE BRING THE
20 JURY IN.

21 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD IN THE
22 PRESENCE OF THE JURY:)

23 THE COURT: PLEASE BE SEATED.

24 LADIES AND GENTLEMEN, GOOD MORNING. HAPPY ST. PATRICK'S
25 DAY.

1 I TRUST THAT YOU HAD A VERY GOOD WEEKEND.

2 I HAVE THE PRIVILEGE OF INFORMING YOU THIS MORNING THAT
3 THE PARTIES HAVE REACHED A SETTLEMENT OF THIS CASE, AND WITH
4 THAT A TRIAL IS NO LONGER NECESSARY.

5 LET ME EXPLAIN TO YOU A COUPLE THINGS, IF I COULD, BEFORE
6 I RELEASE YOU TO YOUR NORMAL LIVES.

7 FIRST, UNDOUBTEDLY, FOR AT LEAST ONE OR MORE OF YOU THERE
8 WILL BE A SMALL SENSE OF DISAPPOINTMENT THAT THE CASE HAS NOT
9 PROCEEDED.

10 LET ME JUST ASSURE YOU IF YOU ARE DISAPPOINTED THAT YOUR
11 PARTICIPATION IN THIS PROCESS HAS NOT BEEN IN VAIN, IT'S BEEN
12 CRITICAL TO BRINGING THE PARTIES TO THIS POINT IN THEIR
13 DISPUTE.

14 SO PLEASE, I MEAN THIS SINCERELY, YOU HAVE PROVIDED A
15 VALUABLE SERVICE TO THIS COURT AND THESE PARTIES, AND FOR THAT
16 WE ARE ALL GRATEFUL.

17 FOR WHAT I SUSPECT IS THE VAST MAJORITY OF YOU WHO ARE
18 THRILLED TO BE MOVING ON WITH THE REST OF YOUR LIVES, LET ME
19 SAY THAT AS SOON AS WE ARE COMPLETED WITH OUR PROCEEDINGS HERE
20 THIS MORNING, MR. RIVERA WILL TAKE YOU BACK INTO THE JURY ROOM,
21 HE WILL GIVE YOU SOME FINAL INSTRUCTIONS FOR REIMBURSEMENT,
22 PARKING, THAT SORT OF THING, AND THEN AT THAT POINT YOU WILL BE
23 FREE TO GO.

24 IF YOU WOULD LIKE, AND I WOULD CERTAINLY ENJOY THIS
25 OPPORTUNITY, I WOULD LIKE TO COME BACK AND VERY QUICKLY THANK

1 YOU IN PERSON FOR YOUR SERVICE. BUT IF YOU DON'T WANT TO STAY,
2 THAT'S YOUR RIGHT AND YOU ARE FREE TO GO.

3 IN THAT SAME SPIRIT, IF EITHER OF THE ATTORNEYS, OR I
4 SHOULD SAY ANY OF THE ATTORNEYS OR ANY OF THE PARTIES WANTED TO
5 SPEAK TO YOU, THEY HAVE A RIGHT TO ASK YOU, BUT YOU DON'T HAVE
6 TO SPEAK BACK TO THEM.

7 IN OTHER WORDS, IF YOU WANT TO JUST GET BACK TO YOUR
8 LIFE, YOU CAN POLITELY DECLINE AND MOVE ON. THE SAME IS TRUE
9 FOR THE PRESS OR ANYBODY ELSE THAT MAY BE INTERESTED IN THIS
10 CASE. YOU DON'T HAVE TO SAY ANYTHING IF YOU DON'T WANT TO SAY,
11 BUT YOU ARE ALSO FREE TO SPEAK ABOUT YOUR EXPERIENCE.

12 I WOULD LIKE TO FINALLY GIVE THE ATTORNEYS AND THE
13 PARTIES AN OPPORTUNITY TO THANK YOU HERE IN THE COURT FOR YOUR
14 SERVICE.

15 MR. BOIES, DO YOU WANT TO PROCEED?

16 MR. BOIES: YES, YOUR HONOR.

17 AND I DO WANT TO THANK YOU. WHAT THE JUDGE SAID IS
18 EXACTLY RIGHT, WE NEVER WOULD HAVE GOTTEN HERE WITHOUT HAVING
19 THE JURY IN THE BOX AND PARTICULARLY THE JURY PAYING AS MUCH
20 ATTENTION TO THIS CASE AS YOU WERE.

21 SO I SAID WHEN I STARTED THAT THIS IS A COUNTRY WHERE WE
22 COME TO THE COURT FOR JUSTICE, AND WE CAN NOT DO JUSTICE
23 WITHOUT YOU.

24 SO THANK YOU VERY MUCH.

25 THE COURT: MR. FUISZ OR ANYONE ELSE, WOULD YOU LIKE

1 TO SAY ANYTHING?

2 MR. J. FUISZ: I SIMPLY WANT TO ECHO THE SAME
3 SENTIMENTS.

4 I KNOW, I COULD SEE ALL OF YOU WORKING AND PAYING A LOT OF
5 ATTENTION, AND I WANT YOU TO KNOW THAT I REALLY APPRECIATE IT.

6 I REALLY DO APPRECIATE IT.

7 THE COURT: THANK YOU, SIR.

8 DR. FUISZ?

9 MR. R. FUISZ: YES.

10 THANK YOU VERY, VERY MUCH. THANK YOU FOR YOUR ATTENTION,
11 AND I'M SORRY YOU MISSED OUT ON SOME STORIES.

12 THE COURT: ALL RIGHT.

13 UNLESS THERE'S ANYTHING FURTHER, COUNSEL AND THE PARTIES,
14 MR. RIVERA, WOULD YOU PLEASE TAKE THE JURY BACK.

15 LADIES AND GENTLEMEN, I WILL BE BACK THERE IN JUST A MINUTE
16 AND I WILL GIVE YOU SOME FINAL WORDS.

17 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD OUT OF
18 THE PRESENCE OF THE JURY:)

19 THE COURT: ALL RIGHT.

20 I WILL GIVE YOU THIS PIECE OF PAPER BACK. I CERTAINLY
21 DON'T NEED TO SEE IT ANYMORE.

22 AND WITH THAT I WISH YOU ALL SAFE TRAVELS HOME.

23 MR. BOIES: THANK YOU VERY MUCH, YOUR HONOR.

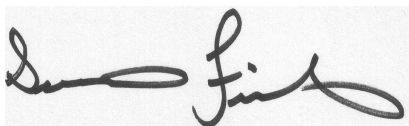
24 THE COURT: THANK YOU ALL.

25 (WHEREUPON, THE PROCEEDINGS IN THIS MATTER WERE CONCLUDED.)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

A handwritten signature in black ink, appearing to read "Summer A. Fisher", is written over a light gray rectangular background.

SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

DATED: 3/17/14